

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NICHOLAS COUNTY

ALLEGED VIOLATION OF KRS 278.020
AND KRS 278.160

)
)
) CASE NO.
) 93-082
)
)

O R D E R

On September 28, 1992, Commission Staff investigated Nicholas County Water Works ("Nicholas Water"), located in the Moorefield Road area, Nicholas County, Kentucky, after receiving notification from a concerned citizen that Nicholas Water was a water utility operating outside the city of Carlisle's corporate limits. The Commission had no knowledge of Nicholas Water prior to this investigation. A copy of the investigation report is attached hereto as Appendix A.

A. V. "Doc" Allison, superintendent of Nicholas Water, stated the water system was originally constructed by the Nicholas County Fiscal Court in 1950 to serve a hospital in the Moorefield Road area of Nicholas County. According to Mr. Allison, the residents along Moorefield Road, who live outside the city of Carlisle's city limits, asked the Nicholas County Fiscal Court if they could connect to this water line. The Fiscal Court agreed to allow these residents to connect to the water main if they would bear the cost of running the water line. Nicholas Water now has 94 customers, all of whom are metered.

Mr. Allison receives a salary in the amount of \$1.50 per meter per month. He gives all funds received for water service to Wanda Dotson, the Nicholas County Treasurer, and reports all of Nicholas Water's activities to Nicholas County Fiscal Court and the County Judge/Executive. Tommy Crawford receives a salary of \$50 per month for reading the meters.

Nicholas Water bills its customers \$6.80 for the first 1,000 gallons and 25 cents for each additional 100 gallons. Customers pay a 3 percent utilities tax on the water billed.

On March 15, 1993, the Commission issued an Order in this case directing Nicholas Water to appear at a hearing scheduled April 22, 1993 to show cause why it should not be penalized pursuant to KRS 278.990 and KRS 278.160 for operating as a utility without obtaining a Certificate of Public Convenience and Necessity from the Commission or filing tariffs with the Commission. Mr. Allison signed the certified mail receipt but did not appear at the hearing. Nicholas County is ultimately responsible for Nicholas Water as it receives all revenue amounts collected that exceed the salaries of Mr. Allison and Mr. Crawford.

Accordingly, the Commission finds that a prima facie case has been established that Nicholas Water is a utility pursuant to KRS 278.010(3)(d) and that Nicholas County failed to obtain a certificate from the Commission prior to collecting compensation for providing utility service in violation of KRS 278.020 and KRS 278.160.

IT IS THEREFORE ORDERED that:

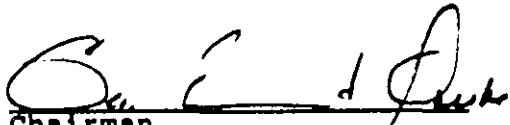
1. Nicholas County, through a properly authorized representative, shall appear at a public hearing scheduled for July 27, 1993 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purposes of showing cause, if any he can, why Nicholas County should not be penalized pursuant to KRS 278.990 for allegedly violating KRS 278.020 and KRS 278.160.

2. Any motion requesting an informal conference with Commission Staff shall be filed by July 13, 1993.

3. Nicholas County shall immediately stop charging for any and all utility services provided by Nicholas Water within the Commonwealth of Kentucky.

Done at Frankfort, Kentucky, this 24th day of June, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

Commonwealth of Kentucky
Public Service Commission

UNAUTHORIZED UTILITY INVESTIGATION REPORT

Nicholas County Water Works
Carlisle, Kentucky

On September 28, 1992, an investigation was made of the Moorefield Road area, Nicholas County, Kentucky. This investigation was performed pursuant to notification by a concerned citizen of Nicholas County to the Public Service Commission ("Commission") that Nicholas County Water Works was a water utility operating outside the city of Carlisle's corporate limits. The Commission having no knowledge of this water system decided to investigate Nicholas County Water Works ("Nicholas Water") to evaluate the possibility of it becoming a utility under the authority of the Commission. This investigation was conducted by K. Michael Newton of the Commission staff with information provided by A. V. "Doc" Allison, superintendent of Nicholas Water.

Investigation

Commission staff talked to Doc Allison about this water system. Doc Allison states the water system was originally constructed by the Nicholas County Fiscal Court in 1950 to serve a hospital in the Moorefield Road area of Nicholas County. The residents along Moorefield Road, who lived outside the city of Carlisle's city limits, asked the Nicholas County Fiscal Court if they could connect to this water line. Nicholas County Fiscal Court agreed to allow these residents to connect to the water main

if they would bear the cost of running the water line. Nicholas Water now has 94 customers. All customers are metered.

Nicholas Water purchases its water via a 4-inch master meter located at the city of Carlisle's corporate limits on Moorefield Road (Highway 36). The water system consists of approximately 2,600 feet of 4-inch transit pipe, 1,500 feet of 4-inch PVC pipe, and various lengths of galvanized and copper pipe. Doc Allison did not know the average water pressure in the distribution system.

Doc Allison has been the superintendent of Nicholas Water since its construction. He receives a salary in the amount of \$1.50 per meter per month. Doc Allison sends out and collects all water bills for Nicholas Water. He turns these funds over to Nicholas County Treasurer, Wanda Dotson. Doc Allison reports all Nicholas Water's activities to Nicholas County Fiscal Court and County Judge, Reese Smoot. Doc Allison states all water meters are read on a monthly basis by Tommy Crawford. Tommy Crawford receives a salary of \$50 per month.

Doc Allison is not certified by Natural Resources Division of Water as a distribution operator. Tommy Crawford is certified as a distribution operator with a 2D certificate with the city of Carlisle. In addition, Natural Resources and Environmental Protection Cabinet's Division of Water has no record of Nicholas Water nor of it taking and testing representative water samples.


Nicholas Water bills its customers \$6.80 for the first 1,000 gallons and 25 cents for each additional 100 gallons afterwards.

These customers pay a 3% utilities tax on the water billed. A copy of a water bill is attached.

Conclusions

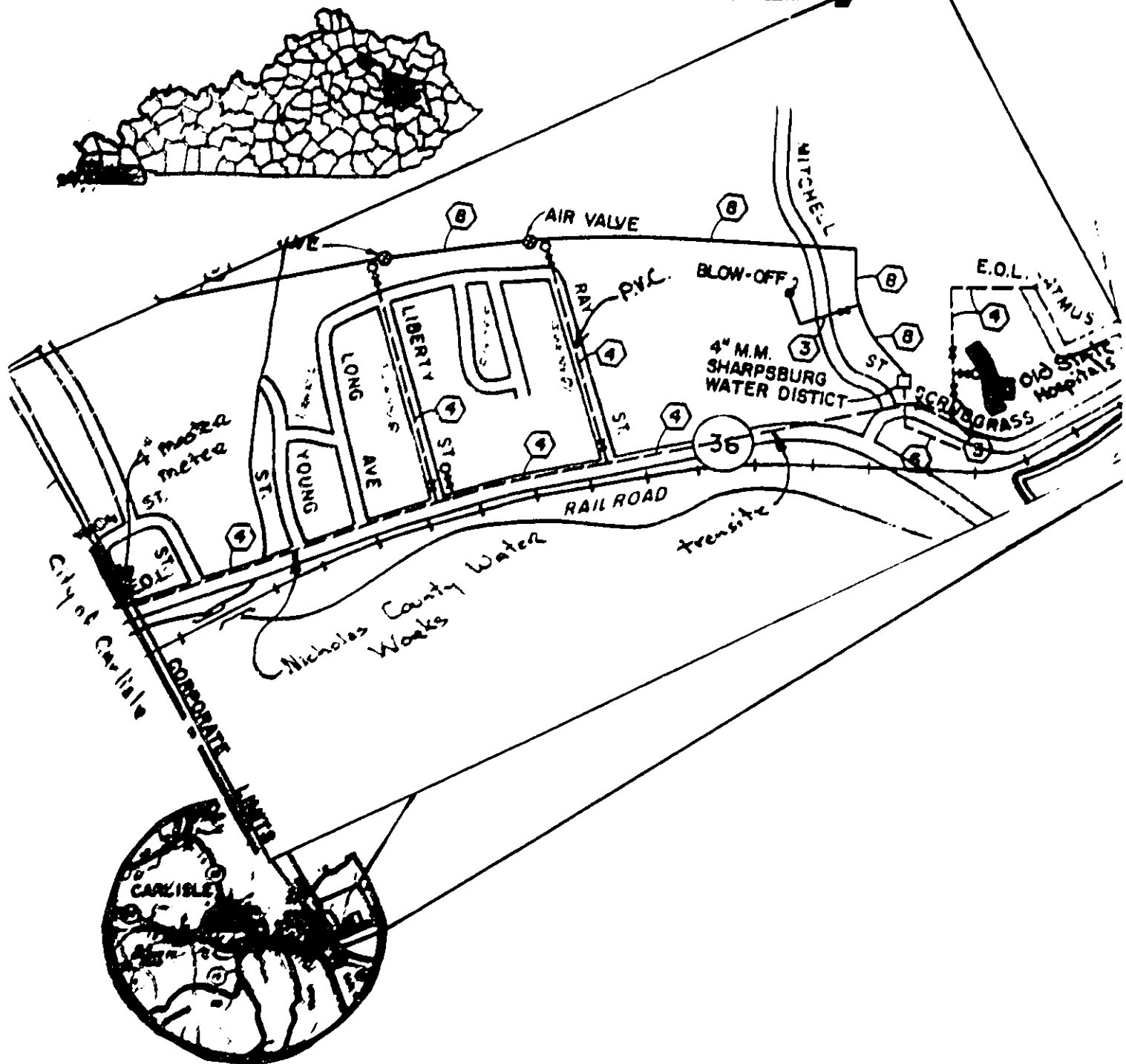
This investigation concludes that the Nicholas County Fiscal Court, owns, controls, and operates a water system in eastern Nicholas County used in distributing water to the public for compensation. Therefore, according to KRS 278.010(3)(d), Nicholas County Fiscal Court operates a water utility d/b/a Nicholas County Water Works and would be a utility subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility.

Submitted,
October 7, 1992


K. Michael Newton
Utility Investigator

CGR:KMN:aem

Nicholas County



Water Hall
Salem, Oregon
Willamette University
Salem, Oregon
1966-1967

6 LOTS 1001

Bring or Mail This Bill to A.V. Allison, Supt.
No Duplicates • 3% Utilities Tax Included

\$7⁰⁰

All bills are due and payable to the Superintendent for the water
used during the preceding month, 10 days from receipt of bill.

First 1,000 gallons \$6.80

Each additional 100 gallons 25¢

For water consumed during month

JUNE

Present Meter Reading _____ 00 Gallons

Last Meter Reading _____ 00 Gallons

Gallons Used _____

NICHOLAS COUNTY WATER WORKS

WATER BILL

case, Kentucky-American alleges that it is premature to review its future construction plans in this case.

Although the balance in the Construction Work In Progress account for the forecasted test year in this case includes approximately \$1.18 million attributable to the proposed pipeline, Kentucky-American acknowledges that this project is not the least costly alternative for satisfying its future supply needs. However, Kentucky-American argues that the focus in this case should be on whether it is reasonable to continue pursuing the pipeline as one, but not the exclusive, alternative to meet its future supply needs. Kentucky-American further states that if the issues surrounding its proposed pipeline are not limited to the proposed expenditures for design and right-of-way option acquisition during the forecasted test year, but are expanded to include all facets of the project, additional testimony from new witnesses will be needed. Kentucky-American concludes its response by moving the Commission for authority to submit its additional testimony at the hearing without submitting written, prepared testimony.

The Attorney General's office, Utility and Rate Intervention Division ("AG"), filed a response in support of Talwalkar's motion. The AG argues the proposed Lexington-to-Louisville pipeline permeates every aspect of this rate case and, having been put in issue by Kentucky-American, any testimony touching upon the pipeline should be considered by the Commission. The AG characterizes the testimony requested from Natural Resources as

"neutral," and concludes that it should be compelled. Although the AG supports presentation of all testimony on the pipeline, he argues that it would be prejudicial to waive the requirement that it be in written form and distributed prior to the hearing.

Based on the motion, the responses, and being advised, the Commission finds that good cause has not been shown to justify compelling Natural Resources to provide expert testimony on reports prepared by others and opinions as to the future actions of legislative and administrative bodies. Natural Resources is not a party to this case nor has it been retained by a party. Due to its statutory responsibility to review and rule upon applications for withdrawals of water from the Kentucky River, an argument could be made that Natural Resources may not be a disinterested, neutral participant. In any event, the Commission finds a motion to compel expert testimony of a state agency in a proceeding to which that agency is not a participant to be extraordinary in nature. As Natural Resources neither prepared nor has first hand knowledge of the engineering studies that impact water withdrawals from the Kentucky River, Natural Resources should not be required to provide expert testimony.

The records requested from the River Authority, being subject to the Open Records Act, can be obtained by Talwalkar directly from the River Authority.

The Commission further finds that while this is not a certificate case, Kentucky-American has put into issue the need for a future source of supply and the reasonableness of a Lexington-to-

Louisville pipeline to satisfy that need. Consequently, the Commission will consider any evidence offered by the parties on this issue. However, due to the need to allow parties sufficient time to prepare for the hearing scheduled on June 30, 1993, Kentucky-American's request to dispense with the requirement that its testimony on the pipeline be filed in written, prepared form should be denied.

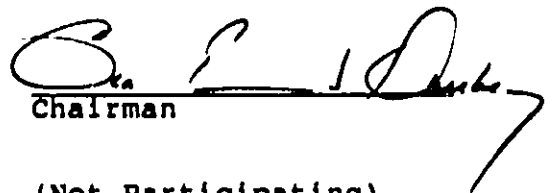
IT IS THEREFORE ORDERED that:

1. Talwalkar's motion to compel testimony of Natural Resources and the records of the River Authority be and it hereby is denied.

2. Kentucky-American's motion to file testimony at the hearing on the issue of source of supply options, rather than filing such testimony in written, prepared form, be and it hereby is denied.

Done at Frankfort, Kentucky, this 24th day of June, 1993.

PUBLIC SERVICE COMMISSION


Chairman

(Not Participating)

Vice Chairman


Commissioner

ATTEST:


Executive Director